IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.9817 of 2004

Shankar Mahadev Sutar
sicne deceased through his LRs
Chitrabai Shankar Sutar & anr. Petitioners
Vs.
Ananda Vasant Sutar & ors. Respondents

Mr.P.D.Dalvi for petitioners.
Mr.P.R.Arjunwadkar for Resp.Nos.1 to 4.

CORAM: B.H.MARLAPALLE,J.

July 31, 2006.

P.C.

. Heard Mr.Dalvi, the learned counsel for the petitioners and Mr.Arjunwadkar, the learned counsel for the respondents. This petition filed under Article 227 of the Constitution takes exception to the order dated 9/9/1993 passed by the learned Civil Judge, Junior Division at Kolhapur. By the said application the defendant prayed that Issue No.6 framed earlier be referred to the Tahsildar, Karvir, Taluka Karvir, Dist.Kolhapur to give a finding on the point of tenancy. The learned Judge of the trial Court was pleased to frame Issues on 14/10/1986 below Exhibit 13 and Issue Nos.5 and 6 from the said Issues read as under:

"5. Does defendant prove that he is in possession of the suit property since before

1977 as a tenant.

6. Does defendant prove that Vasant Dadu Sutar has executed agreement willfully in his favour on 11/4/1977."

. In the impugned order dated 9/9/1993 the learned Judge of the trial Court noted that Issue No.5 was referred to the Tenancy Court on 11/4/1991 and the parties were directed to produce copies of the pleading. The defendants did not take any steps and failed to produce the copies. Consequently the trial Court passed an order dated 3/4/1993 and deleted the said issue. This order was not challenged before the higher authorities and it became final. By allowing the said application the order dated 3/4/1993 could have been reversed and such a course was not permissible for the trial Court as had been rightly noted in the impugned order.

. Hence, no interference is called for in the impugned order and the petition is rejected summarily.

(B.H.MARLAPALLE,J.)